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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,149	08/01/2006	Takaaki Sato	L9289.06175	5049
53989 7590 04/27/2009 Dickinson Wright PLLC James E. Ledbetter, Esq. International Square 1875 Eye Street, N.W., Suite 1200 Washington, DC 20006				
EXAMINER PATHAK, SUDHANSHU C				
ART UNIT 2611		PAPER NUMBER		
MAIL DATE 04/27/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,149

Applicant(s)

SATO, TAKAAKI

Examiner

SUDHANSHU C. PATHAK

Art Unit

2611

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 08/01/2006
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 7-12 are pending in the application.
2. Claims 1-6 have been canceled in Preliminary Amendment dated 08/01/2006.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-11 (apparatus) & 12 (method) are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiema et al. (5,684,793).

In regards to Claims 7, 10-12, Kiema discloses a CDMA radio receiving apparatus in a base station (Fig.'s 1-2) comprising: a plurality of RAKE fingers (Fig. 1, elements 11a-c, 12a-c, 13a-c & Column 2, lines 29-35 & Fig. 2, element 20); and a controlling section that controls a number of RAKE fingers to be used for channel reception among the plurality of RAKE fingers based on signal quality (channel conditions) (Fig. 2, elements 21, 25 & Column 3, lines 35-67 & Column 4, lines 1-15, 55-67 & Column 5, lines 1-11 & Claim 1), wherein: the controlling section allocates a larger number of RAKE fingers to a channel having a smaller BER or SNR (signal quality), and a smaller number of RAKE fingers to a channel having a greater BER or SNR (signal quality) (Column 3, lines 1-15, 35-65 & Column 4, lines 1-15, 35-67 & Column 5, lines 1-10 & Claim 1). However, Kiema does not explicitly disclose controlling the number of RAKE fingers based on spreading factor of the channel.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention that the spreading factor is a parameter determining the channel quality and there is no criticality in selecting this parameter over BER or SNR this is a matter of design choice.

In regards to Claims 8-9, Kiema discloses a radio receiving apparatus as described above. Kiema further discloses controlling section controls the number of RAKE fingers to be used for channel reception based on the spreading factor of the channel at the start of channel reception (Column 4, lines 7-15), and controls the number of RAKE fingers to be used for channel reception based on reception quality of the channel during channel reception (Column 4, lines 15-30, 35-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that Kiema satisfies the limitation of the claim. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention that there is no criticality in selecting the RAKE fingers based on the change rate of reception quality this is a matter of design choice.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUDHANSHU C. PATHAK whose telephone number is (571)272-5509. The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chieh M. Fan can be reached on 571-272-3042.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sudhanshu C Pathak/
Primary Examiner, Art Unit 2611